

The present invention relates to a method of reducing the level of microorganisms on the surface of food and make it safe to eat, by contacting the surface of the food with an aqueous dilute composition for a period of time in excess of about one half of a minute. The Office Action notes that "[t]he reference discloses that the disinfectant is provided but doesn't say how long the composition is to remain on the food produce as in claim 1 and 2." OFFICE ACTION (Paper No. 7) at 3. Indeed, all the reference discloses is that its compositions and processes, especially those that are alkaline, *can* provide effective disinfectancy, but provides no details on how disinfectancy is achieved. Murch et al. thus do not teach or suggest a method for reducing microorganisms on the surface of food as presently claimed.

The Examples of the present invention show the importance of pH of the aqueous dilute treatment composition and the period of time the composition is allowed to remain in contact with the surface of the food, before being consumed. Murch et al. do not teach or recognize the importance of both pH and time in achieving a reduction of microorganisms on the surface of food. While Murch et al. suggest that alkaline compositions can provide disinfectancy, it does not disclose or suggest the period of contact time needed to achieve the reduction of microorganisms, as presently claimed.

The Office Action asserts that "Applicants are recognizing and giving weight to an inherent characteristic of the composition, and nothing new or unobvious is seen in this." OFFICE ACTION (Paper No. 9) at 3. Applicants' submit that by relying on the doctrine of inherency, obviousness under 35 U.S.C. § 103 is being confused with anticipation under 35 U.S.C. § 102. *See, e.g., In re Rijckaert*, 28 U.S.P.Q.2d 1955 (Fed. Cir. 1993) ("[A] retrospective view of inherency is not a substitute for some teaching or suggestion supporting an obviousness rejection"). Furthermore, Applicants respectfully point out that the present claims relate to methods of treating food to reduce the level of microorganisms on the surface of the food to make it safe to eat, as opposed to compositions themselves.

In any event, Murch et al. do not teach or suggest, either expressly or inherently, a method of reducing the level of microorganisms on a surface of food by contacting the surface with the composition for at least one half of a minute. The present invention involves the factor of time in order to achieve the reduction of microorganisms on a surface being contacted with the composition, which is not taught or recognized by Murch et al. Furthermore, "[t]hat which may be inherent is not necessarily known. Obviousness cannot be predicated on what is unknown." *In re Spormann*, 150 U.S.P.Q. 449, 452 (C.C.P.A.


1966). Murch et al. does not disclose or suggest that the element of time has anything to do with disinfectancy. Therefore, Applicants submit that Murch et al. do not teach or suggest the presently claimed method, which requires both a highly alkaline composition and a period of contact time in order to achieve the reduction in microorganisms on the surface of food. Applicants thus submit that Claims 1-21 are unobvious and patentable over Murch et al. under 35 U.S.C. § 103(a).

**CONCLUSION**

In view of the foregoing remarks, reconsideration of the application and allowance of all claims are respectfully requested.

Respectfully submitted,

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